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REPORT

on the application of Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin
(2007/2094(INI))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Kathalijne Maria Buitenweg

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MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

on the application of Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (2007/2094(INI))

The European Parliament,

- having regard to Rule 45 of its Rules of Procedure,
- having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs and the opinions of the Committee on Women's Rights and Gender Equality and of the Committee on Employment and Social Affairs (A6-0278/2007),

Implementation of the Racial Equality Directive

- A. whereas the EU is a political project based on common values such as the protection of human rights and fundamental freedoms, as stated in Article 6 TEU and in the Charter of Fundamental Rights, and promotes equality and non-discrimination through its policies and laws, also on the basis of Article 13 TEC,
- B. whereas it is important that political declarations on the fight against discrimination are matched by the progressive development and full and correct implementation of policies and laws, and notably of the anti-discrimination directives and of the projects promoting equality, such as the European Year of Equal Opportunities for All,
- C. whereas the 2006 annual report of the European Monitoring Centre for Racism and Xenophobia confirms that discrimination remains a serious problem in the Member States,
- D. whereas a recent Eurobarometer survey¹ shows that 64% of citizens in 25 Member States surveyed think discrimination based on ethnic origin is still widespread,
- E. whereas the adoption of Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin² may be seen as a major step in raising the level of protection for victims of discrimination based on racial or ethnic origin and in giving them better possibilities of redress,

Burden of proof

- F. whereas the burden of proof provision is a key aspect of the Directive because it contributes to an effective enforcement of the protection which it provides,
- G. whereas the case-law on the burden of proof shows that there are still considerable divergences between Member States as to what is accepted as prima facie evidence by

¹ http://ec.europa.eu/public_opinion/archives/ebs/ebs_263_sum_en.pdf

² OJ L 180, 19.7.2000, p. 22.

plaintiffs; whereas Member States should therefore be encouraged to exchange views on this subject, with a view to seeing whether it is possible to bring judicial procedures into line with one another,

- H. whereas the effective implementation of the principle of equality would be helped if the rules on the burden of proof in civil and administrative cases were extended to judicial provisions against victimisation,

Equality bodies

- I. whereas almost all Member States now have equality bodies or have allocated the functions to be carried out by such bodies to existing bodies,
- J. whereas all Member States should be encouraged to take the extremely positive step of broadening the remit of their equality bodies to cover discrimination on grounds other than race or ethnic origin,
- K. whereas equality bodies should have adequate resources in terms of both personnel and financing,
- L. whereas equality bodies should be able to function independently of government and should be perceived as functioning independently, i. e. not forming part of government,
- M. whereas, despite the existence of specialised anti-discrimination and equality bodies, the number of registered complaints remains low in a number of Member States,
- N. whereas in practice equality bodies unfortunately bring only a small number of cases before the courts, owing to a lack of financial and human resources; whereas it is often NGOs that provide victims of discrimination with end-to-end assistance in taking action,
- O. whereas the training of public officials on the aims of the Directive is vital because of their responsibility for implementing it,

Scope

- P. whereas it is not always possible to distinguish between discrimination on the ground of racial or ethnic origin and discrimination on the ground of religion, opinion or nationality,
- Q. whereas it is not always easy to determine whether discrimination is based on gender, ethnicity, race, social conditions, sexual orientation or other factors,

Dissemination of information and awareness-raising

- R. whereas the recent Eurobarometer survey confirms that awareness of the existence of anti-discrimination legislation in the EU is quite low and that on average only one third of EU citizens claim to know their rights should they be victims of discrimination or

harassment,

- S. whereas, however, some Member States have taken a wide range of information/awareness-raising initiatives (websites, campaigns, television spots, newspaper advertisements);
- T. whereas some Member States have taken the important initiative of incorporating in their national law an obligation on employers to inform their employees of discrimination laws,
- U. whereas some specialised bodies in the Member States have established hotlines providing information and support to victims of discrimination,
- V. whereas there are also a number of Member States that implemented rather limited information/awareness-raising activities and in some countries no awareness-raising campaigns were reported,
- W. whereas especially in the context of the European Year for Equal Opportunities, both the EU institutions and the Member States should make substantial efforts to inform citizens of their rights, and whereas the latter should ensure that the measures initiated in 2007 continue into 2008, the European Year for Intercultural Dialogue,

Data collection

- X. whereas data collection is essential in the fight against discrimination, and ethnically disaggregated statistical data can be essential for demonstrating indirect discrimination, informing policy and developing positive action strategies, but at the same time raises several ethical and legal questions,
- Y. whereas such data collection must not infringe personal privacy by revealing individual identities or serve as a basis for ethnic or racial profiling,

Legal redress

- Z. whereas alternative dispute resolution procedures should not pre-empt access to the courts,
- Za. whereas a large number of victims of discrimination do not lodge a complaint with the courts for various reasons, including cost and fear of reprisals,
- Zb. whereas the goals of the fight against discrimination can be reached only if the legal measures are combined with positive actions on the level of the EU and the Member States;
- Zc. whereas the European Union Agency for Fundamental Rights has the task of collecting and analysing relevant, reliable, comparable information and data relating to fundamental rights,

1. Reiterates the importance of Directive 2000/43/EC;
2. Recalls that Directive 2000/43/EC is a minimum standard and should therefore act as the foundation on which a comprehensive anti-discrimination is built;
3. Welcomes the Commission Communication on the application of Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (COM(2006)0643), which seeks to establish a framework to combat discrimination based on racial or ethnic origin in order to ensure that the principle of equality before the law, equal opportunities and equal treatment is consolidated in the Member States, whilst fully complying with the principle of subsidiarity and respecting the various national traditions and procedures; while appreciating the overview of the implementation of the Directive contained in the Commission Communication, notes that it would also have been useful to have been provided with a detailed description of the way in which the provisions of Directive 2000/43/EC have been incorporated into national law, as specified in the Directive itself; further notes that the Commission undertook not only to collect detailed information, but to report on it to Parliament and the Council and that Parliament, in its resolution of 14 June 2006 on non-discrimination and equal opportunities for all – a framework strategy¹, asked the Commission to 'examine as to matter of urgency the quality and content of the laws implementing the anti-discrimination directives';
4. Urges Member States to transpose all Community anti-discrimination legislation at the earliest opportunity and to make use of all the instruments available, including positive action, to ensure equality in practice;
5. Stresses that the Directive goes beyond access to employment, self-employment and occupation, and also applies to areas such as education, social protection including social security and healthcare, social advantages and access to and the supply of goods and services in order to safeguard the development of democratic and tolerant societies that allow the participation of all irrespective of racial or ethnic origin;
6. Notes with satisfaction that most Member States have taken action in order to implement the Directive, but is disappointed that only a few have adequately transposed all of its provisions fully;
7. Points out that, in particular, a number of provisions of the Directive such as the definitions of direct and indirect discrimination, harassment and the burden of proof have not been correctly transposed in many countries;
8. Calls, in particular, for strict monitoring of the application of the rule on the partial reversal of the burden of proof, which is particularly effective in the case of employment-related disputes;
9. Expresses its concern that Member States have exempted more areas of activity from the

¹ *Texts Adopted*, P6_TA (2006)0261.

scope of the Directive than is desirable or justifiable;

10. Recalls that the Directive was adopted in June 2000 and that Member States were bound to implement it before June 2003, which gave them enough time to adopt the necessary implementing measures; calls on the Commission to adopt a more proactive approach, for instance by issuing interpretative communications and guidelines for implementation to ensure full and correct implementation by Member States; asks the Commission to continue to monitor the correct implementation of the Directive with vigilance, to publish its evaluation study as soon as possible and to start infringements proceedings where necessary and without delay and in any case before the end of 2007;
11. Reiterates that sanctions applicable to infringements of national provisions adopted pursuant to Directive 2000/43/EC must be effective, proportionate and dissuasive;
12. Calls for the establishment of national integrated action plans in order to effectively tackle all forms of discrimination;
13. Calls on Member States implementing or introducing national action plans to combat racism and discrimination to include components covering the gathering, checking and monitoring of data in key policy areas such as non-discrimination and equality, social inclusion, Community cohesion, integration, gender, education and employment;
14. Calls on the Commission to submit to Parliament and the Council a specific action plan on the mechanisms and methods of observation and description of the impact of the national implementation measures; stresses the importance of developing ways of gathering data on discrimination particularly as regards labour relations, focusing on clandestine, undeclared, poorly-paid and uninsured labour, in line with data protection legislation, as a useful tool for identifying, monitoring and reviewing policies and procedures to combat discrimination, while respecting national integration models; calls on the Commission to lay down common standards for data, so that the information transmitted can be effectively compared; calls for the importance of examining not only the content of the implementing legislation, but also its effectiveness, to be taken on board;
15. Calls on the Commission to request the Member States, in their annual reports on the implementation of Directive 2000/43/EC, to analyse the effectiveness of anti-discrimination legislation in combating patterns of systematic segregation of minorities and women, particularly in the education sector and as regards access to the labour market, healthcare and goods and services, and further to incorporate a gender equality perspective into the reports as a way of alleviating the multiple discrimination faced by many;
16. Reminds the Commission of the fact that Parliament would like to receive a document listing the exemptions created in Member States' legislation, so that there may be a public debate on such exemptions;
17. Recalls that Member States should undertake independent reviews of the impact of national time limits and the effectiveness of the protection against victimisation;

18. Is concerned about the low level of awareness of anti-discrimination legislation among citizens in the Member States and calls on the Commission and Member States to step up their efforts to raise this level of awareness;
19. Encourages the Commission to facilitate the exchange between Member States of best practices in the field of action to combat discrimination on the labour market, including on training courses, and with regard to anonymity in job applications;
20. Considers that the Roma community, together with other recognised ethnic communities, need particular social protection, particularly further to enlargement, since the problems of exploitation, discrimination and exclusion have become more acute in their regard;
21. Emphasises that laws are effective only when citizens are aware of their rights and have easy access to the courts, since the protection system provided for by the Directive depends on citizens taking the initiative;
22. Recalls that Article 10 of the Directive imposes an obligation on Member States to disseminate information to the public on the relevant provisions of the Directive by all appropriate means;
23. Urges Member States to adopt a set of minimum standards under the open coordination method, so as to guarantee access for children from ethnic minorities – particularly girls – to high-quality education and equal conditions, and to adopt positive legislation making it compulsory to end segregation in schools and lay down detailed plans to put an end to the provision of separate, lower quality education to boys and girls from ethnic minorities;
24. Reminds Member States of their obligation to disseminate relevant information to citizens and to encourage and support awareness-raising campaigns about existing national legislation and bodies involved in the fight against discrimination;
25. Urges Member States to ensure that all persons from ethnic minorities – particularly women – have access to primary, preventive and emergency healthcare services, to formulate and implement policies that ensure that even the most excluded communities are given full access to the healthcare system, and to organise training and awareness courses for healthcare workers, with a view to putting an end to prejudice;
26. Urges governments to ensure equal treatment and opportunities under employment and social inclusion policies, to address the extremely high unemployment rates recorded particularly among women from ethnic minorities and, in particular, to address the serious barriers raised by direct discrimination in recruitment procedures;
27. Firmly believes that it is vitally important that officials receive training on the subject of the aims and provisions of the Directive, in view of their responsibility for implementation of the Directive within society as a whole and in order to remove all risks of institutional racism within government bodies themselves; calls on the Member States to invest in such training and encourages them and the Commission to set up European programmes for exchanges between the various national government bodies;

28. Calls on the Member States to collect, compile and publish annually comprehensive, accurate, reliable and gender-disaggregated statistics relating to the following: the labour market, housing, education and training, health and social benefits, public access to goods and services, the criminal justice system, and civic and political participation, and to set clear, quantitative targets and indicators within the employment and social inclusion guidelines that enable them to measure progress in the situation of migrants and/or minorities;
29. Recommends that Member States resource and empower their equality bodies properly so that they can perform their important function effectively, and so that where equalities bodies do have substantial powers they exercise these fully;
30. Recommends that Member States resource and empower the NGOs active in informing citizens and providing legal aid in matters of discrimination;
31. Points out that in informing citizens and providing legal aid, the NGOs carry a disproportionate share of the burden without enjoying corresponding status and funding from the Members State authorities;
32. Recommends that the Commission carefully monitor the independent functioning of equality bodies, for which purpose it can use as a reference the Principles relating to the Status of National Institutions ('the Paris Principles') as adopted by UN General Assembly resolution 48/134 of 20 December 1993 , which include principles on the adequate financing of such bodies¹;
33. Reminds the Commission of Parliament's position that Member States must ensure that independent bodies have adequate financial resources at their disposal in order at least to be able to guarantee that complaints will be dealt with free of charge in the case of those who are not in a position to contribute financially themselves, and calls on the Commission to discuss with the Member States how to achieve this objective;
34. Recommends that Member States make use of the best practices of other Member States, such as allowing equality bodies to initiate legal proceedings on behalf of victims or participate as *amicus curiae* in legal proceedings;
35. Recommends that complaints data and the outcome of relevant procedures by courts, specialised bodies, other bodies or tribunals should be disaggregated according to the ground of discrimination, which would improve the assessment of the effectiveness of the implementation of the legislation, especially in countries where specialised bodies and/or tribunals deal with all grounds of discrimination;
36. Recommends that the Member States provide their equality bodies with sufficient human and financial resources to enable them to perform their important role effectively, including the provision of appropriate assistance to victims of discrimination; considers that such bodies should also be given the necessary powers to investigate cases;
37. Encourages Member States to step up dialogue with NGOs combating all forms of

¹ <http://www.ohchr.org/english/law/parisprinciples.htm>

discrimination and to involve them closely in policies seeking to promote the principle of equal treatment;

38. Stresses that victims of discrimination should be assisted in legal proceedings and recalls that statutory and non-statutory organisations in this respect can be of real help to victims;
39. Calls on the Member States to collect and provide relevant and reliable and comparable information and data to the European Union Agency for Fundamental Rights;
40. Recommends that Member States ensure that such statutory and non-statutory organisations are adequately resourced;
41. Asks the Commission to carefully study the various legal questions and parameters regarding the issue of data collection and to come forward with proposals to improve the recording of cases of discrimination; provision should be made for comparable sets of data to be available from the 27 Member States. At present, this data is not available for all Member States and comparable data is critical to give a solid platform on which to build policy;
42. Asks the Commission to carefully study the various legal questions and parameters regarding the issue of data collection and to come forward with proposals to improve the recording of cases of discrimination, including to ensure that such data collection does not infringe personal privacy by revealing individual identities or serve as a basis for ethnic or racial profiling.
43. Underlines the sensitiveness of treating data related to race and ethnicity, and recalls the applicability of the data protection directives to data treated in the application of the Directive; underlines that additional guarantees should be provided for data on race and ethnicity, as these data could be diverted and used for other purposes in the justice and home affairs field, for instance for ethnic profiling; reiterates its request for the adoption of a Framework Decision on Data Protection, also to guarantee that any interaction of data between the first and third pillars falls under strict data protection rules;
44. Recommends that Member States consider the collecting of statistical data, using the appropriate safeguards on protection of personal data to exclude the use of ethnic profiling, on representation of ethnic and racial groups in different areas of society, including both public and private sector, and to elaborate policies, on the basis of these data, aiming at ensuring equal access to employment, self-employment, occupation, education, social protection and social security, social benefits and access to and the supply of goods;
45. Calls on the Commission to conduct a study examining which Member States have positive action provisions, what the tests are that must be satisfied, how these provisions have been applied in practice by government or non-government bodies, and how effective they have been;

46. Calls on the Member States to make publicly available detailed statistics on racist crime and to develop surveys of crime and/or victims of crime that allow for the collection of quantitative and comparable data on victims of racist crime;
47. Calls on the Commission to look into and supply data on multiple discrimination;
48. Asks the Commission to monitor attentively disguised discrimination based on 'genuine and determining occupational requirements', on the interaction between discrimination based on the application of this exemption on religious grounds in the framework of the Directive on employment and its consequences for race and ethnicity, and to pay particular attention to discrimination in the field of education;
49. Reiterates the political, social and legal desirability of putting an end to the hierarchy of protection against the different grounds of discrimination, and welcomes in this respect the Commission's intention to put forward a proposal for extending the scope of the Directive to all other grounds for discrimination, as stated in its Annual Legislative Programme for 2008; consequently expects the Commission to start preparatory works already this year in order to issue its proposal as soon as possible, and in any case before the end of 2008;
50. Welcomes the Commission's interest in the issue of multiple discrimination, including the launching of a study on this subject; calls on the Commission to adopt a broad concept of multiple discrimination capable of taking into account the possibility of individuals being at risk of discrimination on several grounds at once;
51. Calls on Member States to accord greater importance to evidence of discrimination; recommends that they follow the guidelines relating to evidence of discrimination drawn up by the International Labour Organisation, as proposed by the European Monitoring Centre on Racism and Xenophobia, and that they train people to produce evidence in the key areas of employment and work, education, housing and accommodation, health, access to goods and services, and racist violence;
52. Calls on the Commission to involve the Fundamental Rights Agency in the Community anti-discrimination legislative framework in a manner that is in keeping with that body's remit, so as to enable it to play an important role by supplying a regular stream of accurate and up-to-date information of relevance to the drafting of further legislation;
53. Urges the EU institutions to continue to use the situation of ethnic minorities, particularly women and minors, in applicant countries as a criterion for the purpose of assessing preparedness for accession to the European Union;

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54. Instructs its President to forward this resolution to the Council, the Commission, as well as to the governments and parliaments of the Member States.

EXPLANATORY STATEMENT

Introduction

In 1997 the Amsterdam Treaty included article 13 on non-discrimination to the EC-Treaty. It serves as a basis for two directives, the Employment Equality Directive¹ and the so-called Racial Equality Directive². The latter Directive had to be implemented by the Member States before the 19th of July 2003.

The report of the European Commission³ provides an analysis of the implementation of the Directive for equal treatment between persons irrespective of racial or ethnic origin. At a later stage this year, the European Commission is likely to provide information on possible infringement procedures.

The Rapporteur is of the opinion that the Racial Equality Directive (2000/43/EC) forms an important piece of legislation. It was a major step forward in protecting people against discrimination and giving them possibilities for redress. Also important is the fact that the Directive applies to **all** persons, regardless of citizenship or residence status.

There is still much work to be done for a correct implementation of the Directive. The Rapporteur calls on the Commission to not only look into the correct legal transposition of the Directives, but also to consider the obstacles on the ground. Many people are unaware of their rights or find it difficult to pursue a claim. Information about the anti-discrimination laws and access to the right of redress should get more priority.

Despite progress in the transposition of the anti-discrimination directives, racism has not decreased. On the contrary. Within the European Union, the amount of registered racial acts has dramatically increased. This is accompanied by evidence of increased tolerance for discriminatory behaviour particularly against immigrants and Muslims. Racism is contrary to the principles of the European Union. It undermines social cohesion and hampers emancipation of people. It is important that the European Parliament gives an impetus to increase the political will to address racism.

For the implementation of the Directive, the Rapporteur has looked into scope, legal redress, burden of proof, the equality bodies, dissemination of information and awareness.

1. Scope

The Racial Equality Directive was revolutionary at the time of its adoption, because it did not limit the protection against discrimination to the area of employment. Article 3 includes in the

¹ Directive 2000/78 of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.

² Directive 2000/43 of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.

³ COM(2006) 643 final/2 of 15 December 2006.

material scope amongst others social security, education and the access to goods and services, including housing.

The broad scope of Directive 2000/43/EC was not mirrored in the Employment Directive (2000/78/EC), which prohibits discrimination on grounds of religion or belief, disability, age or sexual orientation, but only in the area of employment and occupation. The Rapporteur welcomes the fact that a number of Member States have adopted the broad scope of the Racial Equality Directive for all grounds of discrimination, thereby going beyond the Directive.

The Rapporteur is of the opinion that the Employment Directive should be amended, to have the same scope as the Racial Equality Directive. This is necessary in order not to create a hierarchy in forms of discrimination and also to avoid problems in case of multiple discrimination.

Moreover, since racism is interlinked with discrimination on the grounds of nationality and/or religion or belief, adjustment of the scope of the Directive might be necessary to increase access to effective redress.

While most countries seem to meet the material scope of the Racial Equality Directive, there are still some significant gaps that need to be addressed. Five Member States, for example, still have to adequately transpose the Directive in the fields outside employment.¹

Moreover, in some Member States the transposition has been limited to the private sector. In two countries military service is excluded from the scope of transposing legislation.² While the public sector is not adequately covered in many Member States, one Member State has limited the application of the Directive in the private sector.³ Since all public and private bodies fall within the material scope of the Directive, it is necessary to find out why certain sectors have been left out.

The Rapporteur also wants to hear from the Commission if the Directive also covers activities of the police authorities in the Member States, such as ethnic profiling.

2. Legal redress

All states combine judicial proceedings with non judicial proceedings. This is important because in civil proceedings the burden of proof is not only on the side of the victim, and because he or she is not dependent on the state prosecutor to file a complaint.

Generally speaking there is a low number of case law on discrimination. Some might conclude that racism is not too big a problem, but research shows otherwise. A more realistic argument is that there are still many barriers to justice. The length and complexity of the procedures may act as deterrent to victims.⁴

¹ Malta, Latvia, Estonia, Poland, Czech Republic.

² Latvia, Malta.

³ Hungary.

⁴ as is the case in Portugal and in Slovenia there are concerns that some judicial proceedings may take five years or more.

On the contrary when it comes to filing a complaint the time is sometimes too short. For example, victims have only 30 days in Hungary or 2 months in the Netherlands and Ireland to bring their case forward.

In a number of Member States insufficient financial means to pursue a case may be a real obstacle.¹

Associations can be of real help to victims. However, many Member States do not foresee special rules on the engagement of associations in discrimination proceedings.² Few States allow associations to engage in proceedings 'on behalf of' victims of discrimination. There are some positive examples like in Spain or Latvia where legal entities legally authorised to defend legitimate collective rights and interests may engage on behalf of the complainant, with his or her approval, in any judicial procedure in order to give effect to the principle on equal treatment based on racial or ethnic origin.

Infringement of anti-discrimination laws must be met with effective, proportionate and dissuasive sanctions. Yet at this stage few countries are considered to have appropriate sanctions in place.

3. Burden of proof

Proving discrimination is notoriously difficult. Particularly in the employment sector the employer has a much stronger position than the employee, because information concerning the allegedly discriminatory decision is usually held by the employer and witnesses are often reluctant to testify against their employer. For this reason, article 8 provides for a so-called two-staged test. Stage one requires persons who consider themselves to have been discriminated to *establish facts* from which it may be *presumed* that there has been direct or indirect discrimination. The burden of proof will then shift to the respondent *to prove* that there has been no breach of the principle of equal treatment. This does not apply to criminal cases.

Several Member States have not (adequately) transposed the provision on the burden of proof.³ Moreover, in many Member States the burden of proof provisions following transposition remain untested due to lack of case law.

The first indications from the case law appear to suggest that even proof of a *prima facie* case remains a difficult obstacle for claimants to overcome. Statistics are difficult to obtain and situation tests often have to comply with strict conditions.

The collecting of sensitive data, which could be necessary to establish indirect discrimination or to assess the extent of discrimination in society, continues to raise concerns and fears in many Member States.

¹ i.e. in the Czech Republic, Lithuania and Slovakia.

² i.e. Denmark, Finland, Lithuania, Sweden or the UK.

³ Austria, Italy, Latvia, Poland, Estonia, Lithuania, Luxemburg, Germany. See Network of Independent Experts, p.73.

4. Equality bodies

Almost all Member States¹ now have equality bodies or have given the functions to be carried out by such bodies to an existing body such as a national human rights institute. A high proportion of the bodies are competent not only for discrimination based on racial and ethnic origin but also on other grounds. The respective bodies provide assistance to victims of discriminations in a variety of ways, like in taking legal action² or by means of giving non-binding opinions on complaints submitted to them³. A number of specialised bodies can investigate complaints of discrimination and usually can force compliance with their findings by all persons involved.⁴

It remains to be seen whether all bodies will be able to carry out their functions independently as required by the Directive.⁵ For instance both in Italy and in Spain the equality bodies are located within ministries.

In some countries the bodies have insufficient financial means to carry out their functions.

5. Dissemination of information and awareness raising

Rights are generally of little use if people are unaware of them. Therefore, Article 10 of the Directive imposes an obligation on Member States to disseminate information to the public on the relevant provisions of the Directive by all appropriate means.

Both the European Commission and the Network of Independent Legal Experts observe that many Member States have failed here. Also the recent Eurobarometer confirms that the awareness of the existence of anti-discrimination legislation is low. Only 35% of the respondents think that their country has a law to prohibit discrimination based on ethnic origin. And only a third of EU citizens claim to know what to do when they are victim of discrimination or harassment. Particularly in the ten new Member States awareness levels are lower.

Nonetheless, the Directive has boosted public debate on anti-discrimination and has led to many important initiatives. A number of Member States, including Malta, Poland and Portugal, have incorporated in their national law an obligation on employers to inform their employees on discrimination laws. Finland has been particularly successful at making available a leaflet on the Non-Discrimination Act in Braille and both in print and on internet in Finnish, Swedish, English, Sami, Russian, Arabic and Spanish.

¹ The exceptions are the Czech Republic, Luxembourg, Malta and Germany.

² i.e. the Finnish, Belgian, Hungarian, Irish, British and Swedish bodies.

³ This is the situation in Austria, The Netherlands, Denmark, Cyprus, Hungary, Latvia, Lithuania, Greece and Slovenia.

⁴ i.e. in Austria, Cyprus, France, Hungary, Ireland, Lithuania and Sweden.

⁵ See report 'developing anti-discrimination law in Europe' the 25 Member States compared, European Network of Independent Experts in the non-discrimination field, November 2006.

It is imperative, however, that in the context of the European Year for Equal Opportunities both the EU institutions and Member States make sure that everyone in Europe is aware of their rights.

MINORITY OPINION

Written declaration pursuant to Rule 48 of the Rules of Procedure
regarding a minority opinion in relation to the BUITENWEG report adopted by the LIBE
Committee

by Mr Koenraad DILLEN

The constitutional basis for Directive 2000/43/EC is questionable; the subsidiary principle is not being observed.

The small number of convictions by the courts does not point to a 'lack of knowledge', but rather to the fact that the problem of 'discrimination' in Europe is being greatly exaggerated. Pleas for 'more money' should be rejected, given that the EU is spending €9 million a year on a Monitoring Centre and €1 million a year on an ENAR network, which is performing the same work.

The reversal of the burden of proof is to be condemned, as, in a democracy founded on the rule of law, a person is presumed innocent until proven guilty.

This directive creates confusion between acts of discrimination and the expression of critical opinions. Freedom of expression must be restored. The recent dangerous pronouncements by the European Monitoring Centre suggesting that 'Islamophobia' represents a new form of discrimination and that the problem of the row over the Danish cartoons should be tackled with a law against blasphemy should be rejected.

Allowing all kinds of associations to institute proceedings themselves constitutes an unacceptable form of privatisation of the justice system.

It is inappropriate to advocate more prohibited grounds of discrimination, providing an opportunity at European level, just as in Belgium, for militant homosexual groups to lodge complaints against dignitaries of the Catholic Church.

11.5.2007

OPINION OF THE COMMITTEE ON EMPLOYMENT AND SOCIAL AFFAIRS

for the Committee on Civil Liberties, Justice and Home Affairs

on the application of Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin
(2007/2094(INI))

Draftswoman: Patrizia Toia

SUGGESTIONS

The Committee on Employment and Social Affairs calls on the Committee on Civil Liberties, Justice and Home Affairs, as the committee responsible, to incorporate the following suggestions in its motion for a resolution:

- A. Whereas according to a recent Eurobarometer survey 51% of Europeans consider that insufficient effort has been made to combat discrimination in their countries,
- B. Whereas Eurobarometer findings regarding the absence of information strategies and the resulting lack of public knowledge regarding European and national anti-discrimination legislation highlight public concern,
- 1. Welcomes the Commission communication on the application of Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, which seeks to establish a framework to combat discrimination based on racial or ethnic origin in order to ensure that the principle of equality before the law, equal opportunities and equal treatment is consolidated in the Member States, whilst fully complying with the principle of subsidiarity and respecting the various national traditions and procedures; while appreciating the overview of the implementation of the directive contained in the Commission report, notes that it would also have been useful to have been provided with a detailed description of the way in which the provisions of Directive 2000/43/EC have been incorporated into national law, as specified in the directive itself; further notes that the Commission undertook not only to collect detailed information, but to report on it to Parliament and the Council and that Parliament, in its resolution of 14 June 2006 on non-discrimination and equal opportunities for all - a framework strategy¹, asked the Commission to 'examine as to matter of urgency the

¹ *Texts Adopted*, P6_TA (2006)0261.

quality and content of the laws implementing the anti-discrimination directives';

2. Recognises that discrimination based on racial or ethnic origin and the different forms of exploitation of migrant labour, including, principally, clandestine and undeclared labour, are undermining the achievement of a high level of employment and social protection, economic and social cohesion, economic growth and efficiency and solidarity;
3. Recognises that the social policy agenda for the period 2005-2010 complementing and consolidating the Lisbon Strategy underpins the Community dimension of economic development and promotes equal opportunities for all, helping to create a society offering greater possibilities for social integration;
4. Stresses that equal weight should be accorded to all grounds for discrimination, including discrimination based on nationality;
5. With particular reference to employment, calls for consideration to be given to certain specific fields of employment, such as employment in any of the Member States providing care and assistance to families and in the home, which is subject to little regulation and protection, and work in the health services, where problems also arise in connection with national legislation on access to public sector employment;
6. Urges the Member States and social partners that have not yet done so to provide the Commission with the necessary information concerning the ways and means used and results attained in combating discrimination based on racial or ethnic origin;
7. Encourages the Commission to take the necessary action to ensure that the Directive is fully and properly implemented; supports and encourages the Commission in initiating infringement procedures under Article 226 of the EC Treaty against those Member States whose national implementing measures are not in accordance with Directive 2000/43/EC, particularly as regards competences and the requirement of independence for bodies for the promotion of equal treatment as defined in Article 13 of that directive and in informing the European citizens broadly of the state of play;
8. Calls on the Commission to submit to Parliament and the Council a specific action plan on the mechanisms and methods of observation and description of the impact of the national implementation measures; stresses the importance of developing ways of gathering data on discrimination particularly as regards labour relations, focusing on clandestine, undeclared, poorly-paid and uninsured labour, in line with data protection legislation, as a useful tool for identifying, monitoring and reviewing policies and procedures to combat discrimination, while respecting national integration models; calls on the Commission to lay down common standards for data, so that the information transmitted can be effectively compared; calls for the importance of examining not only the content of the implementing legislation, but also its effectiveness, to be taken on board;
9. Recognises that services of general interest (SGIs) can play a profound role in combating discrimination and exclusion based on racial or ethnic origin; therefore urges Member States to ensure that SGI providers, with respect to data protection legislation and civil liberties, use ethnic monitoring in order to assure equal treatment and inclusion and thus to underline the key role of SGI providers in this field; underlines that SGI providers could

serve as examples of bodies applying best practices in the equal treatment of racial and ethnic minorities, both, as employers and service providers;

10. Calls, in particular, for strict monitoring of the application of the rule on the partial reversal of the burden of proof, which is particularly effective in the case of employment-related disputes;
11. Encourages the Commission to consider those national provisions that transcend Community requirements and to draw up a balance sheet of the advantages and disadvantages of the national measures put forward and also to cooperate in proposing possible solutions aimed at improving the situation of victims of discrimination;
12. Points out that the prohibition of discriminatory treatment must not prejudice the continuation or introduction of measures to prevent or offset a disadvantageous situation of those of certain racial or ethnic origins where the principal objective of such measures is to meet their particular needs; calls on the Commission to further its reflection on the issue of positive action in order better to define its position on the concept;
13. Supports the measures promoted by the European Social Fund (such as the EQUAL initiative) and the PROGRESS programme for 2007-2013 which seek, amongst other things, to improve the social integration of disabled people and further the fight against discrimination; calls on the Member States and the Community institutions to make every effort to promote strategic objectives which more effectively meet the concerns of citizens of all ages, and to earmark adequate funds for greater solidarity within the European Union and outside its borders, in particular when reconsidering the structure of Community expenditure in 2008-2009;
14. Welcomes the Commission's interest in the issue of multiple discrimination, including the launching of a study on this subject; calls on the Commission to adopt a broad concept of multiple discrimination capable of taking into account the possibility of individuals being at risk of discrimination on several grounds at once;
15. Calls on employers to participate more broadly in promoting, supporting and strengthening the process of non-discrimination in the workplace; stresses the importance of the positive involvement of employers and the positive effects of diversity policy on the workplace; welcomes the conclusion of the negotiations of the European social partners on a framework agreement on harassment and violence in the workplace and enforcing existing legislation in this sphere as an example of how to promote decent work in Europe; calls on the Commission to check that such agreement is actually complied with and implemented; urges employers, in accordance with the principle of corporate social responsibility, to uphold equality and combat racial and ethnic discrimination and exclusion with regard to education and training for workers;
16. Highlights the importance of cooperation between different layers of government – local, national and European – in combating discrimination;
17. Welcomes the growing awareness of diversity and the use of diversity management as good business practice; points to the business benefit of diversity management; recognises that diversity may present a management and recruitment challenge; urges associations of

SMEs to assist their members in this field so that SMEs can benefit from the added value of a diverse work force;

18. Recalls its resolution of 13 March 2007 on "corporate social responsibility: a new partnership"¹, with its stress on combating discrimination as part of that responsibility; reiterates its request to the Commission to encourage the dissemination of good practices resulting from voluntary corporate social responsibility initiatives, while calling on the Commission to include equal treatment and the promotion of diversity on the list of criteria which businesses would be required to respect;
19. Encourages the Commission to facilitate the exchange between Member States of best practices in the field of action to combat discrimination on the labour market, including on training courses, and with regard to anonymity in job applications;
20. Stresses the concern felt by European trade unions at the priority accorded by the Member States, in the dialogue on discrimination, to NGOs rather than to the social partners; insists on the essential role played by the social partners in promoting equal treatment within businesses, in the application of the principle of corporate social responsibility, and in the aid they provide to workers who are victims of discrimination;
21. Appreciates Decision No 771/2006/EC of the European Parliament and of the Council of 17 May 2006 establishing the European Year of Equal Opportunities for All (2007) - towards a just society²; draws attention, however, to the need to link 2007 to 2008, the European Year of Intercultural Dialogue; welcomes the initiatives undertaken in connection with the European Year of Equal Opportunities for All and the efforts made to celebrate differences at the same time as combating discrimination; points to the importance of the rights that exist under current law; urges Member States to take action in the Year of Equal Opportunities for All to raise awareness among citizens about their legal rights; notes that people are finally becoming more aware that inclusive societies, in other words those which face up to the challenges and opportunities offered by diversity, are those in the best competitive position;
22. Considers cohesion and complementarity with other Community measures to be necessary, particularly regarding policies designed to combat discrimination and social exclusion and achieve improvements with regard to fundamental rights, education, training, intercultural dialogue and issues relating to young people, nationality, migration, asylum and gender equality and calls on the Commission to strengthen coordination between the above programmes;
23. As part of the European employment strategy, calls on the Member States to set out, in their national action plans, broader measures and methods with a view to facilitating the integration of all minorities into their labour markets, particularly racial or ethnic minorities; in order to develop a more consistent approach to such integration, calls on the Commission to take into account, in its next guidelines for Member States' employment policies, the key recommendations on the policies to be implemented in this field, due to be submitted by the end of 2007 by the high-level advisory group on social integration of

¹ *Texts Adopted*, P6_TA(2007)0062.

² OJ L 146, 31.5.2006, p. 1.

ethnic minorities and their full participation in the labour market established by Commission Decision 2006/33/EC¹;

24. Considers that participation, independently of racial or ethnic origin, must be extended to areas such as education and vocational training, including the right to learn and maintain proficiency in the language of the country of origin;
25. Considers that the Roma community, together with other recognised ethnic communities need particular social protection, particularly further to enlargement, since the problems of exploitation, discrimination and exclusion have become more acute;
26. Acknowledges the difficulties faced by migrants who have recently arrived in the European Union, particularly women, who suffer a dual form of discrimination, that is to say because of their gender as well as their ethnic origin; calls on the Member States to step up resources and social services for the smooth integration of migrants, while informing them of their rights and obligations in accordance with the principles and legislation applicable in the Member States;
27. Notes that it is necessary to adopt an integrated approach to prohibiting discrimination on the basis of racial or ethnic origin which takes account of the close connection between recognising and protecting the rights of minorities within Member States on the one hand, and measures to combat xenophobia on the other; the need for an integrated approach extends to the connected subject of immigration, with particular reference to the action plan on legal immigration, combating illegal immigration, the future of the European migration network and the rules applying to family reunification and entry into Member States; such coordination would make it possible to improve information and awareness of legislation, but also to clarify and simplify the legal framework, thus avoiding a proliferation of overlapping rules, which have a particularly damaging impact on employment;
28. Calls for NGO action to defend the rights of the victims of human trafficking and to play a greater role in facilitating the granting of residence permits; calls on the Member States to promote the necessary rules to increase the number of government bodies supporting victims of exploitation and extend health care networks and psychological support networks as and where necessary; also calls for the launch of labour inspections in order to eradicate all forms of exploitation and forced labour;
29. Calls on the Member States to ensure that all workers, including those waiting to be regularised, have access to industrial tribunals and authorities responsible for ensuring equal treatment in order to protect their rights in connection with any work they perform, including any performed during periods not covered by a residence permit; calls on the Member States to introduce legal requirements, where necessary, to ensure that migrant workers who have not yet been regularised also have access to the appropriate judicial authorities; and to ensure that all workers are provided with appropriate assistance during, before and after legal proceedings;
30. Calls on the Commission to consider whether it should look into the application of the

¹ OJ L 21, 25.1.2006, p. 20.

principle of equal treatment in the field of social security, particularly in the case of workers who reside or work in a Member State for a limited period only;

31. Calls on the Commission to take immediate action to promote European legislation prohibiting discrimination of all kinds, including discrimination based on religious or other beliefs, disability, age or sexual orientation, ensuring that due account is taken of the provisions of the new UN Convention on the Rights of Persons with Disabilities;
32. Calls on the Commission and Member States to recognise the existence of multiple forms of discrimination and ensure that this is reflected in future policies and programmes.

PROCEDURE

Title	Opinion on the application of Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin
Procedure number	2007/2094(INI)
Committee responsible	LIBE
Opinion by Date announced in plenary	EMPL 26.4.2007
Enhanced cooperation – date announced in plenary	no
Drafts(wo)man Date appointed	Patrizia Toia 22.11.2006
Previous drafts(wo)man	---
Discussed in committee	21.3.2007 7.5.2007
Date adopted	8.5.2007
Result of final vote	+: 33 -: 0 0: 2
Members present for the final vote	Jan Andersson, Alexandru Athanasiu, Edit Bauer, Iles Braghetto, Philip Bushill-Matthews, Ole Christensen, Derek Roland Clark, Luigi Cocilovo, Harlem Désir, Harald Ettl, Richard Falbr, Ilda Figueiredo, Roger Helmer, Stephen Hughes, Karin Jöns, Ona Juknevičienė, Jan Jerzy Kułakowski, Jean Lambert, Elizabeth Lynne, Thomas Mann, Csaba Öry, Siiri Oviir, Marie Panayotopoulos-Cassiotou, Pier Antonio Panzeri, Elisabeth Schroedter, José Albino Silva Peneda, Jean Spautz, Gabriele Stauner
Substitute(s) present for the final vote	Françoise Castex, Donata Gottardi, Richard Howitt, Jamila Madeira, Mario Mantovani, Agnes Schierhuber, Patrizia Toia
Substitute(s) under Rule 178(2) present for the final vote	---
Comments (available in one language only)	---

26.6.2007

OPINION OF THE COMMITTEE ON WOMEN'S RIGHTS AND GENDER EQUALITY

for the Committee on Civil Liberties, Justice and Home Affairs

on the application of Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin
(2007/2094(INI))

Draftswoman: Lívía Járóka

SUGGESTIONS

The Committee on Women's Rights and Gender Equality calls on the Committee on Civil Liberties, Justice and Home Affairs, as the committee responsible, to incorporate the following suggestions in its motion for a resolution:

- A. whereas, despite the existence of specialised anti-discrimination and equality bodies, the number of registered complaints remains low in a number of Member States,
 - B. whereas it is not always easy to determine whether discrimination is based on gender, ethnicity, race, social conditions, sexual orientation or other factors,
 - C. noting with great concern that discriminatory behaviour sometimes also occurs at the highest political level,
1. Calls on the Member States to properly transpose Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin as a means of combating the multiple discrimination faced by women; stresses that Directive 2000/43/EC leaves significant gaps in the legal protection of minorities; stresses further the limited impact that the implementation and enforcement of this legislation has had on the situation of ethnic minority women, in particular the Roma who continue to suffer both gender prejudice and "anti-gypsyism";
 2. Recommends that the Commission take legal action against and, as a last resort, impose dissuasive fines on, Member States that have yet to incorporate the anti-discrimination directives into their national legislation and/or fully implement them, and that it monitor the giving of effect to judgments of the Court of Justice of the European Communities in cases of failure to fulfil obligations;

3. Calls on the Commission to request the Member States, in their annual reports on the implementation of Directive 2000/43/EC, to analyse the effectiveness of anti-discrimination legislation in combating patterns of systematic segregation of minorities and women, particularly in the education sector and as regards access to the labour market, healthcare and goods and services, and further to incorporate a gender equality perspective into those reports with a view to alleviating the multiple discrimination faced by many;
4. Calls on the European Institute for Gender Equality to systematically address gender discrimination in connection with the grounds of discrimination set out in Directive 2000/43/EC in order to assure not only legal coordination but also arrangements made by the Community institutions for addressing multiple discrimination;
5. Calls for the establishment of national integrated action plans in order to effectively tackle all forms of discrimination;
6. Encourages the Member States to exchange best practices on the development of gender mainstreaming toolkits for use by national and local authorities, the judiciary and other administrative bodies when developing capacity building and training programmes on the implementation of Directive 2000/43/EC;
7. Calls on the Member States to provide national bodies responsible for promoting equal treatment with sufficient funding and human resources to enable them to perform the duties provided for in Directive 2000/43/EC, including the provision of appropriate assistance to victims of discrimination;
8. Calls on the Commission and Member States to promote initiatives to disseminate information on women's rights and anti-discrimination rules concerning, namely, access to employment and health services; emphasises the role of the media in reinforcing harmful stereotypes, but also its potential to help combat harmful stereotypes;
9. Calls on the Member States to ensure that the associations concerned are able to help women victims of discrimination who are on lower incomes to take their complaints to court;
10. Calls on the Member States to maintain or adopt specific measures to prevent or compensate for disadvantages linked to gender or racial or ethnic origin;
11. Calls on the Commission to develop a standardised format for gender-disaggregated data collection on racial discrimination in connection with matters such as employment, education, housing and racist violence, and stresses that national capacity building programmes still need to focus on gender-disaggregated data collection and monitoring;
12. Reminds Member States of their obligation to disseminate relevant information to citizens and to encourage and support awareness-raising campaigns about existing national legislation and bodies involved in the fight against discrimination;
13. Calls on the Member States to collect, compile and publish annually comprehensive, accurate, reliable, gender-disaggregated statistics relating to the following: the labour

market, housing, education and training, health and social benefits, public access to goods and services, the criminal justice system, and civic and political participation, and to set clear, quantitative targets and indicators within the employment and social inclusion guidelines that enable them to measure progress in the situation of migrants and/or minorities;

14. Urges the Member States to adopt a set of minimum standards under the open method of coordination, so as to guarantee access for women and children to high-quality education and equal conditions, and to adopt legislation making it compulsory to end segregation in schools and lay down detailed plans to put an end to the provision of separate, lower quality education to boys and girls from ethnic minorities.

PROCEDURE

Title	The application of Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin
Procedure number	2007/2094(INI)
Committee responsible	LIBE
Opinion by Date announced in plenary	FEMM 26.4.2007
Enhanced cooperation – date announced in plenary	
Drafts(wo)man Date appointed	Livia Járóka 22.3.2007
Previous drafts(wo)man	
Discussed in committee	5.6.2007 25.6.2007
Date adopted	25.6.2007
Result of final vote	+: 19 –: 0 0: 1
Members present for the final vote	Edit Bauer, Emine Bozkurt, Esther De Lange, Edite Estrela, Věra Flasarová, Esther Herranz García, Urszula Krupa, Pia Elda Locatelli, Marie Panayotopoulos-Cassiotou, Zita Pleštinová, Christa Prets, Raül Romeva i Rueda, Eva-Britt Svensson, Anna Záborská
Substitute(s) present for the final vote	Gabriela Crețu, Anna Hedh, Mary Honeyball, Elisabeth Jeggle, Maria Petre, Corien Wortmann-Kool
Substitute(s) under Rule 178(2) present for the final vote	
Comments (available in one language only)	...

PROCEDURE

Title	The application of Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin		
Procedure number	2007/2094(INI)		
Committee responsible Date authorisation announced in plenary	LIBE 26.4.2007		
Committee(s) asked for opinion(s) Date announced in plenary	EMPL 26.4.2007	FEMM 26.4.2007	
Not delivering opinion(s) Date of decision			
Enhanced cooperation Date announced in plenary			
Rapporteur(s) Date appointed	Kathalijne Maria Buitenweg 19.12.2006		
Previous rapporteur(s)			
Discussed in committee	20.3.2007	5.6.2007	27.6.2007
Date adopted	27.6.2007		
Result of final vote	+ 48 - 2 0 1		
Members present for the final vote	Alexander Alvaro, Alfredo Antoniozzi, Kathalijne Maria Buitenweg, Giuseppe Castiglione, Giusto Catania, Carlos Coelho, Fausto Correia, Esther de Lange, Panayiotis Demetriou, Bárbara Dührkop Dührkop, Kinga Gál, Patrick Gaubert, Roland Gewalt, Elly de Groen-Kouwenhoven, Lilli Gruber, Adeline Hazan, Jeanine Hennis-Plasschaert, Livia Járóka, Ewa Klamt, Roger Knapman, Magda Kósáné Kovács, Wolfgang Kreissl-Dörfler, Barbara Kudrycka, Stavros Lambrinidis, Henrik Lax, Dan Mihalache, Viktória Mohácsi, Claude Moraes, Javier Moreno Sánchez, Athanasios Pafilis, Luciana Sbarbati, Inger Segelström, Károly Ferenc Szabó, Vladimir Andreev Urutchev, Ioannis Varvitsiotis, Manfred Weber, Tatjana Ždanoka		
Substitute(s) present for the final vote	Adamos Adamou, Edit Bauer, Simon Busuttil, Gérard Deprez, Koenraad Dillen, Maria da Assunção Esteves, Iratxe García Pérez, Ignasi Guardans Cambó, Sylvia-Yvonne Kaufmann, Tchetin Kazak, Jörg Leichtfried, Marianne Mikko, Herbert Reul, Rainer Wieland		
Substitute(s) under Rule 178(2) present for the final vote			
Date tabled	6.7.2007		
Comments (available in one language only)			